STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 15, 2002
v	No. 236094 Oakland Circuit Court
KEITH CARL EIFERT, Defendant-Appellant.	LC No. 00-175670-FC

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment without possibility of parole for the murder conviction and to a mandatory two-year prison term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in not suppressing the statement he made during an interview at the police station. According to defendant, the statement was inadmissible because he was in police custody and had not yet been advised of his *Miranda*[1] rights. Defendant failed to challenge the admissibility of this statement in the trial court, thereby failing to preserve this issue for our review. As a result, defendant is not entitled to relief on this basis unless he establishes plain error affecting his substantial rights.[2]

An officer's obligation to give *Miranda* warnings to a person attaches only when the person is in custody, meaning that the person has been formally arrested or subjected to a restraint on freedom of movement of the degree associated with a formal arrest. *Stansbury v California*, 511 US 318, 322; 114 S Ct 1526, 1528-1529; 128 LEd2d 293 (1994). "It is now axiomatic that Miranda warnings need only be given in cases involving custodial interrogations." *People v Anderson*, 209 Mich App. 527, 532, 531 N.W.2d 780 (1995). The key question is whether the accused could reasonably believe that he was not free to leave. *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998).

[1] *Miranda v Arizona*, 384 US 436, 86 SCt 1602, 16 L Ed2d 694 (1966).

[2] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Here, defendant was advised that he did not have to come to the police station for questioning and was told that the choice whether to come was entirely up to him. Thus, defendant was not entitled to suppression of the statements on the basis of the officers' failure to give *Miranda* warnings because defendant had not been arrested at the time of the interviews and there is simply no evidence in the record to suggest that the police officers put a restraint on defendant's movement to the degree that he could reasonably believe that he was not free to leave. Consequently, defendant has failed to demonstrate the plain error that is the prerequisite to granting him relief.[3]

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald

[3] Defendant also suggests that his counsel was ineffective for failing to move to suppress the confession. This issue is without merit in light of our conclusion that defendant was not in custody at the time of the interview.